

37 Am. Jur. 2d Fraud and Deceit § 59

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Fraud and Deceit

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IV. False Representations

A. In General

§ 59. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  9

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[Employer's liability, under state law, for fraud or misrepresentation inducing employee to take early retirement, 14 A.L.R.5th 537](#)

[Computer sales and leases: breach of warranty, misrepresentation, or failure of consideration as defense or ground for affirmative relief, 37 A.L.R.4th 110](#)

Trial Strategy

[Real-Estate Broker's Misrepresentation or Nondisclosure as to Condition or Value of Realty, 39 Am. Jur. Proof of Facts 3d 309](#)

[Fraudulent Representations Inducing the Purchase of a Small Business, 30 Am. Jur. Proof of Facts 3d 1](#)

[Misrepresentation in Automobile Sales, 13 Am. Jur. Trials 253](#)

False representations undoubtedly constitute the most frequent basis for actions in fraud and deceit, as well as for equitable relief on the ground of fraud.¹ As a general rule, making a false representation or misrepresentation of fact is one of the elements of an action for fraud.² Determinations as to the materiality³ and falsity⁴ of a statement are issues which determine whether a particular statement is actionable for fraud.

False and fraudulent misrepresentations by a seller as to the subject matter of the contract may constitute fraud for which the buyer may maintain an action for damages or rescind the sale, and as a general rule, every willful misrepresentation by the seller in respect to a fact, which affords a material inducement to the sale and operates to deceive the buyer, may be made the basis of a charge of fraud.⁵ Furthermore, a purchaser, although ordinarily under no duty to speak unless in a confidential relationship, must refrain from making false and deceitful statements in respect to the vendor's property in order to induce the vendor to sell it.⁶

Fraudulent representations may play a dual role. They may be the basis for an independent action for fraud; they may also, in equity, be a basis for an equitable estoppel⁷ barring the defendant from invoking the statute of limitations against a cause of action⁸ for breach of fiduciary relations.⁹

Observation:

The Restatement Second, Torts defines when a misrepresentation is fraudulent in terms of the knowledge or belief of the maker; thus, a misrepresentation is fraudulent if the maker: (1) knows or believes that the matter is not as he or she represents it to be; (2) does not have the confidence in the accuracy of his or her representation that the maker states or implies; or (3) knows that he or she does not have the basis for his or her representation that the maker states or implies.¹⁰ The Restatement Second, Contracts takes a similar approach but adds the qualification that the maker must also intend to induce a party to manifest his or her assent.¹¹ With respect to a representation which the maker knows to be capable of two interpretations, one of which he or she knows to be false and the other true, is fraudulent, under the Restatement Second of Torts, if it is made: (1) with the intention that it be understood in the sense in which it is false, or (2) without any belief or expectation as to how it will be understood, or (3) with reckless indifference as to how it will be understood.¹²

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Footnotes

- ¹ Adams v. Gillig, 199 N.Y. 314, 92 N.E. 670 (1910); Alabiso v. Schuster, 273 A.D. 655, 80 N.Y.S.2d 314 (4th Dep't 1948).
- ² § 24.
Necessity that representation be of fact, see §§ 63 to 83.
- ³ §§ 227 to 230.
- ⁴ §§ 106 to 108.
- ⁵ Standard Motors Finance Co. v. Mitchell Auto Co., 173 Ark. 875, 293 S.W. 1026, 57 A.L.R. 877 (1927); Stallings v. Moore, 73 S.W.2d 562 (Tex. Civ. App. Fort Worth 1934); Mayer v. Rankin, 91 Utah 193, 63 P.2d 611, 110 A.L.R. 837 (1936).
- ⁶ Crompton v. Beedle, 83 Vt. 287, 75 A. 331 (1910).
- ⁷ Erbe v. Lincoln Rochester Trust Co., 13 A.D.2d 211, 214 N.Y.S.2d 849 (4th Dep't 1961).
- ⁸ Am. Jur. 2d, Limitation of Actions § 408.
- ⁹ Erbe v. Lincoln Rochester Trust Co., 13 A.D.2d 211, 214 N.Y.S.2d 849 (4th Dep't 1961).
- ¹⁰ § 119.

¹¹ [Restatement Second, Contracts § 162\(1\).](#)
As to intent to induce reliance, see [§ 110](#).

¹² [Restatement Second, Torts § 527.](#)

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